

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of the Petitions of)	
)	
)	
New York RSA 2 Cellular Partnership)	
)	
and)	CC Docket No. 96-45
)	
St. Lawrence Seaway Cellular Partnership)	
)	
For Designation as Eligible)	
Telecommunications Carriers Under)	
47 USC §214(e)(6) in the)	
State of New York)	

**COMMENTS OF
THE NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION, INC.**

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On July 6, 2005, the Federal Communications Commission (“FCC” or “Commission”) released for comment the Petitions (“Petitions”) for Eligible Telecommunications Carrier (“ETC”) status by New York RSA 2 Cellular Partnership and St. Lawrence Seaway Cellular Partnership (“Petitioners”) for the State of New York.¹ Both Petitioners are controlled by U.S. Cellular Corp. and claim to meet the requirements established in the Commission’s *Virginia Cellular Order*.² The two Petitions are identical generic filings, save for the rural areas to be designated in New York State and, as a result, will be addressed together.

¹ *Parties are Invited to Comment on Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, Public Notice, DA 05-1952 (released July 6, 2005). The Notice also included similarly filed petitions by other wireless carriers in various states.

² *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (released January 22, 2004). (“*Virginia Cellular Order*”)

SUMMARY

The New York State Telecommunications Association, Inc. (“NYSTA”) hereby states our opposition to the grant of the Petitioners’ requests.³ The Petitions do not provide any specificity as to how the companies will meet the requirements of ETC designation, including those enumerated in the *Virginia Cellular Order*. In fact, the Petitions leave many important questions unanswered, pending the filing of supplemental materials at some unidentified date. As a result, the Petitions do not sufficiently explain how the Petitioners will satisfy the *Virginia Cellular Order*’s public interest criteria, including that it will advance universal service, increase competitive choice, and commit to provide high quality telephone service without overburdening the federal Universal Service Fund (“USF”). Accordingly, the requests for ETC designation throughout the Designated Areas of New York State should be denied in all respects. In the alternative, the Petitions should be denied in all rural study areas for not meeting the requirements.

STATEMENT OF INTEREST

NYSTA is a non-profit association incorporated in 1921 whose membership includes all of the incumbent local exchange carriers operating in New York State as well as several competitive local exchange carriers, interexchange carriers, and Internet service providers. The incumbent local exchange carrier members of NYSTA (“ILECs”) have all been certified as ETCs and were providing ubiquitous service prior to designation. The Petitioners have sought ETC designation in Verizon-New York’s

³ The member companies of NYSTA concurring in this filing appears as Attachment I.

service territory as well as nine rural study areas⁴ and, accordingly, our member ILECs are directly affected by the Petitions. Additionally, one of these rural ILECs, Citizens Telecommunications Company of New York, Inc., has also been identified as needing their study areas redefined because the Petitioners' licensed service territories purportedly do not cover all of the study area.

PARAMETERS OF THE ISSUE

The Petitioners are licensed Commercial Mobile Radio Service providers in New York State. However, in order to be designated as an ETC, a carrier must demonstrate that it meets the requirements of Section 54.101(a) of the Commission's Rules⁵ and the criteria established in the *Virginia Cellular Order*.⁶

NYSTA disputes the Petitioners' positions that grant of their Petitions for ETC status in the Designated Areas (which includes the eight rural study areas) will serve the public interest by enhancing the availability of Universal Service in New York and promoting competition in the state's rural areas.

⁴ These study areas include those served by Champlain Telephone Co., Chazy & Westport Telephone Corp., Citizens Telecommunications Company of New York, Inc., Citizens Telephone Company of Hammond, New York, Inc., Crown Point Telephone Corp., Edwards Telephone Co., Frontier Communications of AuSable Valley, Inc., Nicholville Telephone Co., and Township Telephone Co.

⁵ See also 47 CFR 54.201(d) and 47 CFR 54.405.

⁶ In addition, specific ETC designation rules were approved by the Commission on March 17, 2005, except that the applicable sections (§§54.202 and 54.209) will not become effective until approved by the Office of Management and Budget, which has not yet occurred (See: *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 05-46 (released March 17, 2005), as reported in 70 FR 29960 (2005)).

On January 22, 2004, the FCC issued its *Virginia Cellular Order* which not only addressed whether Virginia Cellular had met the requirements to be an ETC in the Commonwealth of Virginia, it laid out specific criteria which the Commission would apply to all other ETC requests for rural areas.⁷

The Commission determined that “the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”⁸ As a result, the *Virginia Cellular Order* established the following public interest criteria for consideration of a ETC request in rural areas:

- (1) The benefits of increased competitive choice
- (2) The impact of multiple designations on the Universal Service Fund
- (3) The unique advantages and disadvantages of the competitor’s service offering
- (4) Any commitments made regarding quality of telephone service, and
- (5) The competitive ETC’s ability to provide the supported services throughout the designated service area within a reasonable time frame⁹

In addition, the *Order* also imposed “as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding.”¹⁰ Virginia Cellular voluntarily agreed to the following:

- (1) To provide service where customers lack wireline access
- (2) To provide a mobility benefit, which is especially helpful in rural areas where people drive significant distances
- (3) To provide a larger local calling area than the incumbents, with less toll charges
- (4) To use USF monies to build more facilities and improve coverage
- (5) To comply with CTIA’s Consumer Code for Wireless Service
- (6) To annually provide the FCC with a list of complaints per 1,000 handsets

⁷ *Virginia Cellular Order* at p. 3.

⁸ *Id.*

⁹ *Id.*, at pp. 13-14.

¹⁰ *Id.*, at p. 3.

- (7) If not serving the entire area of a rural telephone company's territory, will commit to provide Universal Service throughout its entire licensed area to avoid cream skimming¹¹

As a result of the *Virginia Cellular Order*, all carriers seeking ETC status in rural areas must now comply with all of these additional requirements as well as the more generic language in the FCC Rules. Examination of the Petitions indicates that the companies have not satisfied the *Virginia Cellular Order* public interest criteria, rendering it insufficient for approval. Accordingly, the Petitioners have not demonstrated any knowledge of the areas in which they seek designation or their qualifications to be ETCs in any study area of New York State.

ARGUMENTS AGAINST GRANTING ETC STATUS

The Petitions Lack the Necessary Specificity to Make Any Reasonable Determinations as to Whether the Requirements for ETC Status are Met

The *Virginia Cellular Order* specifies that the ETC applicant must demonstrate that it will provide service where customers lack wireline access, a mobility benefit, and a larger local calling area, as well as to use USF monies to build more facilities and demonstrate the ETC's ability to provide the supported services throughout its Designated Area within a reasonable time frame. However, the Petitioners have failed to provide any information which would allow for a determination to be made regarding to what extent they currently meet any of the above requirements, nor what future steps are planned to be in compliance with the requirements laid out in the *Virginia Cellular Order* other than a mere statement of commitment.

¹¹ *Id.*, at pp. 14-15.

In order to determine if and to what extent the Petitioners currently meet the above requirements or how the granting of ETC status and receipt of funds will improve the position of the Petitioners in providing the above-enumerated benefits, one would expect that, at a minimum, any determinations would be made based upon a review of current coverage within the service area as well as a review of planned and future network upgrades and time frames to ensure the requirements of the *Virginia Cellular Order* are met. The Petitioners have failed to make a showing and provide even the barest of information and facts necessary for any reasonable policymaker to make such a determination.

In this post-Enron environment, it would be untenable for a regulatory agency to make a determination granting federal support based upon not only an incomplete record, but, in this case, no record at all regarding how the applicant currently, or in the future, meets the requirements established by that regulatory agency.

As an example, both Petitions seek to serve areas in and around the vast Adirondack State Park, six million acres of private and public lands. The ability to increase service coverage in the Adirondack Mountains is not an endeavor to be taken lightly due to construction restrictions from several agencies, including the Adirondack Park Agency. Thus, the inclusion of mere boilerplate language in the Petitions regarding improved coverage can not be taken seriously here. Until more specifics are provided as to how they will accomplish the feat of constructing additional facilities in the Designated Areas (a proper use of High Cost funds), both Petitions are deficient. In fact,

both Petitioners recognize the inherent difficulties in adding facilities by admitting that where they would need to build, current wireless coverage generally “is poor at best and in some areas unavailable.”¹²

The Petitioners Will Not Be Increasing Competitive Choice

The Petitions include statements such as “[p]rovision of high cost support to New York RSA 2 will begin to level the playing field with incumbent LECs and *make available for the first time* a potential competitor for primary telephone service in remote areas of New York.”¹³ Such language provides further example of the Petitioners’ complete lack of knowledge of the areas in which it seeks designation.

The ILECs in the Designated Areas are already facing competition for voice customers from cable television and others utilizing Voice over Internet Protocol (“VoIP”) technology. The Petitioners will, therefore, not “provide incumbent LECs with an incentive to introduce new, innovative, or advanced service offerings”¹⁴ as this has already occurred.

In the Designated Areas identified in the Petitions, any benefits resulting from the Petitioners being granted ETC status will be minimal, at best. Cable television operators have been deploying their digital voice services in direct competition with the incumbents

¹² See: New York RSA 2 ETC Petition, at p. 19 and St. Lawrence Seaway ETC Petition, at p. 20.

¹³ New York RSA 2 ETC Petition, at p. 18; St. Lawrence Seaway ETC Petition, at p. 18. (*emphasis added*).

¹⁴ Id.

and the availability of broadband (both DSL and cable modem service) is nearly ubiquitous.¹⁵ As a result of this broadband deployment, stand-alone VoIP providers, which only require a broadband connection to the premises to provide services to end users, can roll (and have rolled) out their services in the Designated Areas with a minimum of cost and effort. Accordingly, with the current availability of facilities-based competition in the Designated Areas, the Petitions do not meet the competitive choices criteria from the *Virginia Cellular Order*.

The Petitioners Will Not Be Increasing Universal Service in the Designated Areas

The Petitioners also argue that they will increase the availability of telephone service in the Designated Areas.¹⁶ What they fail to recognize is that 94.5 percent of New Yorkers already receive local telephone service, exceeding the national average of 93.8 percent.¹⁷ As a result, universal availability of local service will not be affected due to the existing ubiquitous landline coverage. Further, the “mobility benefit” referenced in the *Virginia Cellular Order* can not be met by the Petitioners because they do not currently serve all of the Designated Areas¹⁸ and because of the inherent difficulties of *any* provider receiving permission to construct new cell towers in or near Adirondack Park, where the rural Designated Areas are located.

¹⁵ See: *Study of Rural Customer Access to Advanced Telecommunication Services*, issued February 1, 2003 by the New York State Department of Public Service.

¹⁶ New York RSA 2 ETC Petition, at p. 16; St. Lawrence Seaway ETC Petition, at p. 17.

¹⁷ *FCC Report “Trends in Telephone Service,”* Industry Analysis and Technology Division, Wireline Competition Bureau, April 2005.

¹⁸ As proof of their current lack of ubiquitous service, the Petitioners admit that they will use high-cost support to improve their service in areas they would not otherwise invest in. See: New York RSA 2 ETC Petition, at p. 13 and St. Lawrence Seaway ETC Petition, at p. 13. However, Petitioners will find significant difficulty building in the unserved areas.

The Petitioners Will Not Improve Service Quality in the Designated Areas

Next, the Petitioners have agreed to adopt the Cellular Telephone and Internet Industry Association (“CTIA”) Consumer Code for Wireless Services and to annually report on the number of consumer complaints per 1,000 handsets, as Virginia Cellular agreed to in its petition. As the FCC recognized in its *Virginia Cellular Order*, the CTIA Consumer Code for Wireless Services “sets out certain principles, disclosures, and practices for the provision of wireless service.”¹⁹

This Code pales in comparison to the requirements placed on landline local exchange carrier ETCs on both the federal and state levels. Specifically, in New York State, every existing ETC which is a landline LEC is subject to specific mandates entitled “The Telephone Fair Practices Act,” which includes rules governing applications for service, service suspension and termination, deferred payment arrangements, service deposits, bill content, and complaint handling procedures.²⁰ Numerous other requirements are placed on landline LECs/ETCs in New York State as well -- such as service ordering, reporting on customer trouble reports per 100 access lines, directories, installation performance, and answer time performance²¹-- which do not apply to wireless providers because they have been specifically exempted from the jurisdiction of the Public Service Commission.²² Therefore, when the Petitioners actually provide service in any of the rural study areas identified in their Petitions, it will be subject to a significantly

¹⁹ *Virginia Cellular Order*, at p. 14.

²⁰ 16 NYCRR § 609.

²¹ See: 16 NYCRR §§ 602 and 603.

²² N.Y. Pub. Serv. Law § 5(3).

lighter regulatory load than the incumbent LEC. Accordingly, ETC designation will do nothing to improve service quality in the rural study areas included in the Petitioner's Designated Areas which are not currently served.

The service quality provided by the carriers serving the Designated Areas has been well recognized. In fact, Champlain Telephone Co., Chazy & Westport Telephone Corp., Citizens Telephone Company of Hammond, New York, Inc., Crown Point Telephone Corp., Edwards Telephone Co., Frontier Communications of AuSable Valley, Inc., Nicholville Telephone Co., and Township Telephone Co. have all received Commendation Awards for excellent service from the State Commission at least once in the past three years.²³

Thus, should the Petitions be granted, an unlevel regulatory playing field will have been created whereby certain ETCs (namely the Petitioners) will be able to receive all of the benefits which accompany the grant of ETC status with only a fraction of the burdens placed on every other ETC. This is an inherently unfair situation which requires redress.

²³ The New York State Public Service Commission awards Commendations annually based upon a carrier's Customer Trouble Report Rate ("CTRR") and Complaint Rate. For CTRR, a Commendation will be awarded where 95 percent or more of a company's central offices have performance results in a given year in the performance range of 0-3.3 trouble reports per 100 access lines (RPHL). In addition, the Complaint Rate is the number of complaints per 1,000 access lines per year, with a Commendation level of 0.075 or less.

The Petitioners Should Not be Permitted to Draw from the USF

The Petitioners claim that they seek ETC status in order to receive USF funding and bring coverage to areas currently lacking.²⁴ As demonstrated above, even if the companies are able to secure funding, there is no guarantee that they will be able to improve coverage in the Designated Areas.

In its March 17, 2005 decision referenced in footnote 6, above, additional requirements will be soon placed on ETCs, pending approval of the Office of Management and Budget (“OMB”). These new obligations include:

- (1) Demonstrating how signal quality, coverage, or capacity will improve due to the receipt of high-cost support;
- (2) Estimating the amount of investment for each project that is funded by high-cost support;
- (3) Specifying the geographic areas where improvements are to be made;
- (4) Estimating the population that will be served as a result of the improvements;²⁵
- (5) Detailing information in a progress report on how much universal service support was received and how it was used to improve signal quality, coverage, or capacity.²⁶

In addition, if the ETC applicant does not believe that service improvements in a particular wire center are needed, it must explain why and demonstrate how funding will be used to further the provision of supported services in that area.²⁷ In other words, ETCs

²⁴ New York RSA 2 ETC Petition, at p. 19; St. Lawrence Seaway ETC Petition, at p. 20.

²⁵ 47 CFR §54.202(a)(ii).

²⁶ 47 USC §54.209(a)(1).

²⁷ 47 CFR §54.202(a)(ii).

will not be able to take High Cost monies without being able to demonstrate concrete improvements in service availability.

NYSTA firmly believes that competitive ETCs should not be able to draw from the federal USF without a detailed, factual description of the need for the money. Generalized assertions of the benefits of competition and mobility should never be sufficient to support a funding request. Rather, as the Commission recognized in its March 17, 2005 decision, detailed carrier-specific information must be provided to show how universal service support will be used to provide services that are better and more valuable than current offerings.²⁸ Petitioners should not be able to skirt this reasonable requirement just because their requests were received prior to OMB approval.

The Petitioners Should Not Receive ETC Designation Because They Do Not Serve the Entire Study Areas of a Rural ILEC

In both Petitions, the companies claim that because their licensed service territories do encompass all of the wire centers of a rural ILEC's study area, it is permitted to force the rural carrier to disaggregate into individual wire centers.²⁹ The Petitions cite to §54.207(d) of the Commission's Rules which authorize the FCC to initiate proceedings to redefine rural telephone company study areas to be different than its service area.

²⁸ 70 FR 29962 (2005).

²⁹ New York RSA 2 ETC Petition, at p. 23; St. Lawrence Seaway ETC Petition, at p. 23.

In the instant Petitions, St. Lawrence Seaway Cellular Partnership and New York RSA 2 Cellular Partnership are seeking to have Citizens Telecommunications Company of New York, Inc. disaggregate because the two RSAs do not cover all of Citizens' study area. Citizens Telecommunications has over 110 wire centers in its study area and forcing the company to disaggregate down to the wire center level would be an extremely administrative burden in terms of regulatory reporting requirements.

Further, the fact that the Petitioners will not technically be "cream skimming" because the wire centers to be served are the least densely populated, does not eliminate our concerns. NYSTA's position is that wireless ETCs should only ever be granted authority to be ETCs in those territories where their current service area encompasses the entirety of an underlying rural study areas. Splitting up the underlying territories and study areas of ILECs for a wireless ETC will result in the underlying territories being split for any and all competitive providers which may wish to enter the ILEC's territory in the future. As a result, even if the ILEC could disaggregate in a manner which would separate the high cost and low cost zones for Petitioners, that would mean that there would be new low cost zones which would be available for cherry-picking by some other competitor. Such a result would be untenable.

CONCLUSION

Accordingly, all of the perceived benefits outlined in the Petitions, namely that the mere presence of the Petitioners in the Designated Areas "will spur a competitive

response” from the Independent,³⁰ are unsupported boasting, at best, which question the Petitioners’ understanding of the very markets in which they seek designation. The affected ILECs already provide superior service quality to all customers, offer highly regarded customer service, have deployed DSL, and have basic local service rates at or below the comparable Verizon benchmark. In addition, facilities-based competition is currently available. The Petitioners have offered empty sentiments with details to follow in a supplemental filing.

The Petitioners will not be providing new, competitive services to customers which lack landline service, as Virginia Cellular demonstrated. They have not made commitments to customer service quality that approach the level of service demanded of every other ETC in the state. They will not be providing a “mobility benefit” under the *Virginia Cellular Order* because they lack service coverage, and, will face extreme difficulty in constructing new facilities in the Adirondacks and other remote sites. Further, Petitioners should not be permitted to split rural study areas, especially where, as here, the end result would be administratively burdensome for the ILEC. Forced disaggregation in any event will ultimately injure the rural carrier and should not be permitted.

³⁰ New York RSA 2 ETC Petition, at p. 16; St. Lawrence Seaway ETC Petition, at p. 17.

Accordingly, NYSTA respectfully requests that the Commission deny the Petitioners' requests for ETC designation in New York State in their entirety for the reasons cited above because the Petitioners' failed to meet even the minimum public interest requirements. In the alternative, the requests must be denied in the rural areas of the state because the Petitions are deficient and not in the public interest.

Respectfully submitted,

**NEW YORK STATE TELECOMMUNICATIONS
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Dated: July 20, 2005

Attachment I -- Member Companies Concurring in this Filing

Armstrong Telephone Company
Berkshire Telephone Corporation
Cassadaga Telephone Corporation
Champlain Telephone Company
Chautauqua & Erie Telephone Corporation
Chazy & Westport Telephone Corporation
Citizens Telecommunications Company of New York, Inc.
Citizens Telephone Company of Hammond, New York, Inc.
Crown Point Telephone Corporation
Delhi Telephone Company
Dunkirk & Fredonia Telephone Company
Empire Telephone Corporation
Fishers Island Telephone Company
Frontier Communications of AuSable Valley, Inc.
Frontier Communications of New York, Inc.
Frontier Communications of Seneca-Gorham. Inc.
Frontier Communications of Sylvan Lake, Inc.
Frontier Telephone of Rochester, Inc.
Germantown Telephone Company, Inc.
Hancock Telephone Company
Margaretville Telephone Company, Inc.
Middleburgh Telephone Company
Newport Telephone Company, Inc.
Nicholville Telephone Company
Ogden Telephone Company
Oneida County Rural Telephone Company
Ontario Telephone Company, Inc.
Pattersonville Telephone Company
State Telephone Company
Taconic Telephone Corporation
TDS Telecom -- Deposit Telephone
TDS Telecom -- Edwards Telephone
TDS Telecom -- Oriskany Falls Telephone
TDS Telecom -- Port Byron Telephone
TDS Telecom -- Township Telephone
TDS Telecom -- Vernon Telephone
Trumansburg Telephone Company
Warwick Valley Telephone Company